

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,	:	CRIMINAL NO.:15-10046-LTS
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
	:	
MARTIN LUSTGARTEN ACHERMAN, et al	:	
Defendant.	:	

**JOINT MOTION TO AMEND THE ORDER FOR INTERLOCUTORY SALE OF
9801 COLLINS AVE, UNIT 6L, BAL HARBOUR, FLORIDA**

The United States of America, by its attorney, Carmen Ortiz, United States Attorney for the District of Massachusetts, defendant Salomon Bendayan (the “Defendant”), individually and by his attorney (the “Parties”), hereby jointly move that this Court enter an Amended Order, in the form submitted herewith. The Court previously granted an Order permitting the interlocutory sale of the real property, with all rights appertaining thereto, known as 9801 Collins Avenue, Unit 6L, Bal Harbour, Florida, including all buildings and appurtenances thereon, more particularly described in a deed recorded at Official Records Book 26822, Page 1344, of the Public Records of the Miami-Dade, Florida County (the “Bal Harbour property”).

Procedural History:

As Ordered by the Court, (DOC 38), an Interlocutory Sale of the Bal Harbour property was completed on May 15, 2015. The Order contained the manner of distribution of the monies upon closing of Bal Harbour. See (DOC 38), paragraph (c).

The Court further Ordered, that, to preserve the *status quo* and to maintain the equity available from the Bal Harbour and the Avenue U properties the net sale proceeds from the sale

of the Bal Harbour property be used to pay for the balance owed on the Avenue U property.

The closing on the Bal Harbour property took place on May 15, 2015. The net proceeds of \$875,000 as ordered by the Court were forwarded to the Avenue U property's closing Attorneys, Wachtel, Masyr & Missry, LLP at 885 Second Avenue, 47th Fl., New York, New York 10017.

As part of closing costs for the Avenue U property, an estimated interest calculation of \$11,000.00 was assessed. (DOC 38, pg. 2; paragraph (c)(vi)). Such assessment was incorrect, however; the actual amount of the interest calculations total \$96,299.00. Per the Court's Order, authorizing the amount assessed for release upon closing, only \$11,000.00 was applied to the Avenue U property's closing costs as to the interest. This left a balance of \$85,299.00 owed to the Seller. As the parties agreed to, the balance of the sale proceeds from the Bal Harbour property were wired to the Escrow Account of Howard B. Brownstein, Esq.

The closing attorneys for the Avenue U property, Wachtel, Masyr & Missry, LLP, prepared the estimated interest calculations previously submitted to the Court. Such calculations vary as certain interest payments were not made by purchaser Eva Bendayan for an extended period beginning on March 4, 2013 thru the closing date May 18, 2015. As such the interest due at closing was miscalculated thus not authorized for disbursement, and the agreement to purchase the Avenue U property has not been finalized, even though the closing took place on May 18, 2015. (See Annexed Letter, "Closing Agreement.")

Wherefore the Parties jointly move that this Court Order that the additional balance of \$85,299.00 be forwarded from the Escrow Account of Howard B. Brownstein, Esq. to the closing Attorneys Wachtel, Masyr & Missry LLP to finalize the closing for the Avenue U property located in Brooklyn, NY, with all other Ordered conditions (DOC 38) remaining in

effect. A proposed amended Order is submitted herewith for consideration by the Court.

Respectfully submitted,

CARMEN M. ORTIZ
United States Attorney

By: /s/ Veronica M. Lei
VERONICA M. LEI
B.B.O #673122
Veronica.lei@usdoj.gov
Assistant United States Attorney
U.S. Attorney's Office
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748 – 3100

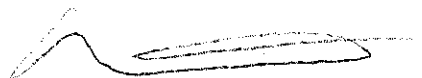
Salomon Bendayan,
By his Attorney

By: s/Howard Brownstein
HOWARD BROWNSTEIN, ESQ.
Brownstein & Associates P.C.
512 42nd Street
Union City, NJ 07087
hbb@bba-law.com
T: (201) 866 – 4949
F: (201) 866 – 4161
Admitted *Pro Hac Vice*

Date: June 25, 2015

CERTIFICATE OF SERVICE

I hereby certify that the forgoing Joint Motion for amending the Order (DOC 38), as well as the proposed Amended Order, were filed through the Electronic Court Filing System and will be sent electronically to the registered participants as identified on the Notice of Electronic filing.

/s/ 
Howard B. Brownstein

Dated: June 25, 2015

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
v.)	Criminal No. 15-10046-LTS
)	
MARTIN LUSTGARTEN ACHERMAN, <i>et al.</i> ,)	
Defendants.)	

AMENDED ORDER FOR INTERLOCUTORY SALE

It is hereby ORDERED, ADJUDGED, and DECREED that:

The Joint Motion to Amend the Order for Interlocutory Sale of 9801 Collins Avenue, Unit 6L, Bar Harbour, Florida, is allowed.

ABM Investment Group, LLC, a Florida limited liability company, shall market and sell the real property, with all rights appertaining thereto, known as 9801 Collins Avenue, Unit 6L, Bal Harbour, Florida, including all buildings and appurtenances thereon, more particularly described in a deed recorded at Official Records Book 26822, Page 1344, of the Public Records of the Miami-Dade, Florida County (the "Bal Harbour Property").

Defendant Salomon Bendayan's counsel, Howard B. Brownstein, Esq., shall receive and hold the net proceeds of the sale of the Bal Harbour Property in the Brownstein Booth & Associates Trust Account, or other interest bearing account, pending the conclusion of this criminal case.

The interlocutory sale of the Bal Harbour Property will take place on the following terms:

- a. ABM Investment Group, LLC is to engage the services of a licensed real estate broker to aid in the sale of the Bal Harbour Property. Such real estate broker shall be paid the customary fees associated with the sale of the Bal Harbour Property, but not to exceed 6% commission. The Defendant and ABM Investment Group, LLC agree that the sale of the Bal Harbour Property shall not be made for a price less than \$1,225,000;

- b. By the time of the closing, the United States Attorney's Office for the District of Massachusetts shall provide the proper documentation to release the *Lis Pendens*, recorded on April 9, 2015, in Official Records Book 29572, Page 2502 of the Public Records of Miami-Dade County, Florida, against the Bal Harbour Property;
- c. At the closing, proceeds of the full sale price shall be transferred to the closing attorney retained to complete the sale of the Bal Harbour Property. The closing attorney shall distribute the sale proceeds in the following manner and order:
 - (i) all costs and expenses reasonably incurred by the Defendant and ABM Investment Group, LLC in the sale of the Bal Harbour Property; more specifically, the real estate broker fee described in paragraph (a) above, closing attorney's fees, and tax stamps paid by the seller;
 - (ii) the cost of any comprehensive insurance on the Bal Harbour Property;
 - (iii) any outstanding real estate taxes due to Miami-Dade County or Bal Harbour, Florida with respect to the Bal Harbour Property;
 - (iv) any valid and superior liens, attachments, or encumbrances of record with respect to the Bal Harbour Property, recorded prior to the United States Attorney's Office for the District of Massachusetts's *Lis Pendens*;
 - (v) the balance owed on the Avenue U Property, in the amount of \$875,000.00, to Wachtel Masyr & Missry LLP at 885 Second Avenue, 47th Floor, New York, New York 10017;
 - (vi) the following closing costs associated with the purchase of the Avenue U Property:

Title Bill (including local and state transfer taxes):	\$88,147.69
Title Closer fee:	\$250.00
Legal Fee of Seller:	\$2,650.00
Working Capital Contribution:	\$5,000.00
Interest Calculation per Contract:	\$96,299.00
Attorney Fees for Avenue U Partners, LLC	\$6,500.00
Common Charges Payable: May and June 2015	\$6,955.92
Move-in Fee:	<u>\$500.00</u>
 TOTAL	 \$206,302.61

- (vii) any remaining net balance of the sale proceeds shall be forwarded to the Defendant's undersigned counsel, to be held in the Brownstein Booth & Associates Trust Account, pending the conclusion of the criminal case.
- d. At the conclusion of all forfeiture proceedings relating to the Bal Harbour Property, any net proceeds held in the Brownstein Booth & Associates Trust Account shall be disposed of according to law.

SO ORDERED AND ENDORSED:

The Honorable Leo T. Sorokin
United States District Judge